

# STATEMENT OF NEED AND REASONABLENESS

## I. INTRODUCTION

The purpose of rules regulating the public use of State Parks and State Forest recreation areas is "to provide for the public enjoyment of the same in a way that will leave them unimpaired and minimize conflicts among users" [ Minnesota Rules Part 6100.0200]

Existing rules have focused on developed recreation areas such as parks, campgrounds and day use areas. Additional parts adopted in 1990 applied to motorized activities and non-motorized uses of trails within the Richard J. Dorer Memorial Hardwood Forest.

There is a general increase in the use of forests and parks. Outdoor recreation is assisted by technology and equipment in ways that challenge past management techniques. For instance motorized ATV trail riders cover many more miles per day than hikers. Forests which once seemed expansive, shrink in the presence of this new technology. In order to maintain quality experiences for visitors and an unimpaired resource for the future, it is necessary for management techniques and regulations to stay abreast of changes in the patterns and degrees of use.

The major changes deal mainly with the dispersed uses of forest areas, where they serve to further regulate motor vehicle use and certain other uses. It is in the dispersed areas that the symptoms of over use and visitor conflicts are emerging as the management challenge of the near future. Other changes proposed in this amendment consist of some minor revisions to existing parts and subparts, which are intended to make them more comprehensible and useful. Detailed descriptions of these problems and proposed solutions are presented in this document.

## II. DEPARTMENT'S STATUTORY AUTHORITY

The Department's authority to adopt and amend these rules is set forth in:

- Minn Stat 16A.1285, which provides for review by the Commissioner of Finance of fees charged and collected by state departments, and exempts from rule making certain kinds of fees.
- Minn Stat 84.03, which provides, "The commissioner may adopt and promulgate reasonable rules, not inconsistent with law, governing the use and enjoyment of state land reserved from sale, state parks, state water access sites, state trails, state monuments, state SNA's, state wilderness areas and recreational areas..."
- Minn Stat 85.052 which authorizes the commissioner to promulgate rules and establish fees for park use.

---

Minnesota Department of Natural Resources

Rules Governing Parks and Trails; Public Use of State Parks and Other Recreational Areas  
August 28, 1998

SONAR

1

- Minn Stat 85.053 which authorizes park entry permits.
- Minn Stat 85.20 which provides penalties for violations of state park rules.
- Minn Stat 86A.05 which sets forth the purposes of state parks and forest lands as units of the outdoor recreation system.
- Minn Stat 86A.06 which authorizes the commissioner to adopt rules for units of the outdoor recreation system.
- Minn Stat 89.031 which authorizes the commissioner to adopt rules for the care and management of forest lands.
- Minn Stat 89.19 which authorizes the commissioner to adopt rules for the use of forest lands and forest roads.
- Minn Stat 89.20 which provides that “camping on posted state forest land or the erection of any type of building without written authorization shall be considered trespass.”
- Minn Stat 89.21 which provides, “ the commissioner is authorized to establish and develop state forest campgrounds... and charge fees for such uses as specified by the Commissioner of Natural Resources.
- Minn Stat 89.71 which authorizes the commissioner to manage forest roads and make rules for their use.

### III NEED FOR AMENDMENTS

Several developments in recent years have prompted the Department to consider regulating motor vehicle use and certain dispersed uses of state forest lands for recreational activities. These include:

- Legislation passed in 1993 that made funds available for the development of trails for off - highway motorcycles and off-road vehicles [Minn Stat Sections 84.794 and 84.797]. Legislation that made funds available for the development of trails for all-terrain vehicles was passed in 1984 [Minn Stat Sec. 84.927].
- A report to the legislature in 1995 entitled “Comprehensive Recreational Use Plan, Off - Highway Motorized Recreation in Minnesota” which recommends that it is time for the Department, “to proactively provide for off-highway motorized recreation opportunities commensurate with the demands of the clientele...”
- Legislation passed in 1995 that closed the Sand Dunes state forest to recreational shooting, and subsequent legislation appropriated funds for the establishment of a shooting range in the state forest [Minn Stat Sec. 89.022 subd 45 ]
- Legislation passed in 1988 that established state forest roads as separate and distinct from “public highways” [Minn Stat Sec.89.71]
- A general increase in recreational use on forest lands outside of forest campgrounds and day use areas. These uses include: camping outside of established campgrounds, commercial operations that use forest trails on state lands, and the use of state forest lands for long term seasonal camping (known as

- 'squatting'). If unregulated, all of these have the effect of excluding visitors unfairly from the legitimate enjoyment of state forests and damaging forest lands.
- Issues identified by Department field staff as they encountered problems with conflicting uses, resource damage and complaints from the public. Some of the amendments deal with these operational problems.

Some amendments re-state statutory authority. This facilitates field enforcement because rule violations can be handled by field citations. The alternative, in many cases, is lengthy civil court action for statutory violations which, for small infractions, is rarely practical.

#### IV REASONABLENESS OF THE RULE AMENDMENTS

##### A. Notification of Persons and Classes of Persons Affected by the Proposed Rule

Over - all Approach: In an effort to determine reasonable solutions for the problems and issues identified in the "NEED FOR AMENDMENTS", and to reach persons who could be affected by the proposed rules, the following steps were taken:

- 1 An internal work group of field staff was formed to provide input to the initial draft amendments. Staff from the Divisions of Forestry, Parks, Enforcement, Wildlife and Trails and Waterways participated.
- 2 A "Request for Comments" was published in the State Register on February 24, 1997. Specific rule language was not published at the time. However, a discussion paper was sent to those who requested information. This paper identified the issues the Department planned to address and described possible solutions. [Discussion paper - Appendix A] Seven comments were received from interested citizens. These were considered in drafting the proposed amendments. The Department provided additional notice to people who may be affected by the proposed rules. This included: mailing the request for comments to forty organizations which represent outdoor recreation interests, individuals known to be interested in the rules because they attended a public meeting about the Sand Dunes State Forest shooting range plan, parties who have registered with the Department for the purpose of receiving notice of rule proceedings, and two major outdoor interest publications. Additionally, a statewide news item was prepared and included in the Department's weekly news release which is distributed to all general news media in the state, some border state media, outdoor recreation publications, free lance writers, county auditors and agricultural agencies.
- 3 An external advisory committee was formed, which consisted of representatives from interest groups who expressed an interest in participating. All persons who responded to the initial "Request for Comments" were invited to join the advisory

committee. Twenty eight responded. [Advisory group member list - Appendix B]

- 4 The Department began to develop plans, with public participation, for managing the use of off - highway vehicles (OHV) on state forest lands. This effort started in the Northeast region. The remaining regions followed suit. Concurrently, the Department formed an OHV coordinating committee to coordinate the combined regional activities and develop a statewide OHV management plan draft. [Summaries of regional planning and public input efforts- Appendix C]
- 5 The commissioner has undertaken classification of forest lands with regard to OHV use. The classification scheme was developed with public input. The classification scheme is attached to this document. [Forest classification process documents, open house schedule, summaries of comments, classification map and memo - Appendix D]

Additional notice: additional notice will be provided to persons or classes of persons who could be affected. Our notice plan involves sending a “dual notice of intent to adopt rules with or without a public hearing” to all groups and individuals who expressed interest in response to the request for comments and news coverage that followed and to those parties on the department’s list for notice of rule proceedings.. In addition, a news release will be distributed statewide which announces publication of the rule in the state register and invites comments. Finally, to comply with Minn. Stat. Sec. 14.116, the dual notice of intent to adopt rules and the SONAR will be sent to legislators who were authors of legislation authorizing the rule making, or are chairs of the policy and budget committees with jurisdiction over the subject matter of the rules..

## **B. Regulatory Analysis**

Description of the Classes of Persons Affected by the Proposed Rules: The proposed rule changes may affect: persons who use state parks or forest lands for recreational purposes including persons who hunt near state forest recreation areas, persons who target shoot at state forest shooting ranges, persons who wish to release plants or animals on state forest lands or in state parks, persons who camp in state forest or state park campgrounds, persons who store or abandon personal property on state forest lands, persons who operate motor vehicles on forest roads and trails, persons who operate recreational motor vehicles , including all- terrain vehicles, off- highway motorcycles and off- road vehicles on state forest lands, persons who engage in non-motorized recreation activities, and persons who engage in rock climbing activities in state parks.

The rules do not impose costs nor confer benefits on any particular group or visitor. However, persons who are accustomed to unregulated access and use of certain forest



section that addresses the reasonableness of individual rule amendments. These are summarized as follows:

- Elevated scaffolds on state forest lands: It was considered to prohibit the construction of permanent scaffolds altogether. This option was rejected due to the scattered distribution of state forest lands which are intermingled with other lands and thus would be confusing to the public.
- Off-highway vehicle management: It was considered to impose more restrictive regulations on off-road vehicles (e.g. 4x4 trucks) than on all-terrain vehicles and off-highway motorcycles. This was rejected in favor of simply describing the types of damaging practices that are not allowed. Thus, trucks may operate on permissible trails at their discretion, unless the trail is posted for a specific other purpose.

It was considered to not allow an off trail travel exemption for big game retrieval in forests classified as limited. This was rejected because this is an established use that does not cause the type of damage or conflicts this rule is intended to manage.

Probable Cost of Compliance With the Proposed Rules: The rules do not create or establish new fees. The provisions do not impose restrictions or require actions that will result in additional costs for the use and enjoyment of parks, trails or forests.

Assessment of the Difference Between Proposed Rules and Existing Federal Regulations: All topics addressed in this rule are governed by state statute. There are no references to federal regulations, nor are federal regulations cited as an authority to regulate state action.

Regulatory Licenses or Other Changes in the Proposed Rules: The only fees specified in the rules, that are not set by statute, concern special event permits (Part 6100.0550) and camping in forest campgrounds (Part 6100.1250, subp. 2). These fees are not subject to review and comment by the Commissioner of Finance under Minn Stat Section 16A.1285, subd. 4(5). They are charges for use of public facilities operated by the state, and the charges are set according to prevailing market conditions to recover operating costs.

Farming Operations: The proposed rules will not affect farming operations.

Performance Based Regulatory Analysis, Minn Stat. 14.002 : The stated purpose of these rules is “ to provide for the public enjoyment of the same [state parks and state forest recreation areas] in a way that will leave them unimpaired and minimize conflicts among users”. The rule institutes only one new permit requirement (rock climbing). The general approach is to describe behaviors and practices which reasonably protect the resource (such as for dispersed camping), to notify visitors of special circumstances in which rules

apply (such as shooting ranges), and generally permit visitors to enjoy the state's resources without irreparably consuming them or causing conflict with other visitors. Regulations for off-road use of motor vehicles on forest lands are the result of extensive discussions with the public and organized groups which represent motorized users. There were significant changes as the rule provisions progressed from the "idea stage" originated by the department to that which was finally proposed. Throughout this development, the rule became clearer and more flexible, with a focus on describing acceptable riding behaviors so that regulations would be stricter only where needed. The Department believes this approach has resulted in a rule which is informative and flexible, while meeting the goal of sustainable recreational use of natural resources.

### **C. Reasonableness of Individual Rule Amendments**

6100.0100, Statutory Authority: The statutes cited provide authority for various provision of these rule.

6100.0200, Purpose: Changes here are intended to clarify language and do not change the meaning of the rule.

6100.0300, Scope: This part is amended to eliminate the distinction of the Richard J. Dorer Memorial Hardwood Forest (RJD) from other forest lands here, and incorporate it into the body of the rule. The proposed addition of parts and subparts that apply to all forest lands renders distinction here unnecessary and cumbersome. It is reasonable to state clearly within each part and subpart what it applies to, instead of requiring the reader to refer to "scope" to see which part applies to which types of lands.

Language that exempts certain persons lawfully engaged in their duties is moved to a new part, "Official Use and Variance" for purposes of clarity and is broadened to include public safety purposes. It is reasonable to place language that exempts persons and activities separately from language that defines the scope of lands to which the rule applies. It is reasonable to exempt public safety activities since these are as critical to visitor safety as those of law enforcement.

6100.0500, Definitions: Several terms that are used in the rule have statutory definitions. These are referenced in this part for convenience and clarity. Some definitions are amended to clarify or update them. Other terms, which have no statutory definition are added. These are:

- Dispersed Camping- It is necessary to define dispersed camping because this activity will be regulated in the rule. The definition distinguishes this type of

- camping from camping in established campgrounds.
- Forest Lands- The existing definition for “Forest lands under the authority of the commissioner” is edited to “forest lands”. This change is intended to simplify the definition and provide a less wordy term to use in the rule but does not change the meaning or intent of the definition.
- Forest Recreation Area- It is reasonable to add this definition so that parts of the rule can refer collectively to a variety of developed recreation sites.
- Forest Trail- It is necessary to define “forest trails” so that they may be distinguished from “forest roads” and from “state trails”. It will be important for forest visitors to know the difference between a road and a trail because motor vehicle use regulations will be different on roads and trails. It is also necessary to distinguish “forest trails” from “state trails” because “state trails” are regulated under different rules. (Minnesota Rules parts 6100.3000 to 6100.4300)
- Horse- It is necessary to define “horse” because the rule regulates the activities of horse riders on forest lands and in parks. It is reasonable to include other animals in the definition because these types of animals have a similar effect on the land, and they are often used in conjunction with horses to transport materials. The definition also expands the types of animals that can use the horse trails.
- Restricted Area- It is necessary to define “restricted area” because the term is used in the rule. This term is in the rule now, but no definition is provided. By adding a definition, it will be easier for visitors to know when they are in a restricted area.
- Rock Climbing- It is necessary to define “rock climbing” because the term is used in the proposed amendments. It is reasonable to specify that rock climbing applies to non- horizontal surfaces, and to include commonly accepted terms for rock climbing, so that regulated rock climbing activity can be distinguished from hiking and other non- hazardous activities that generally cause no damage to the resource or danger to the public safety.
- Scramble Area- It is necessary to define “scramble area” because the term is used in the proposed amendments. In a designated scramble area, unrestricted motor vehicle operation will be permitted. This contrasts with another proposed amendment which requires motor vehicles to stay on the trail.
- Service Animal- It is necessary to define “service animal” so that they can be distinguished from pets. Regulations that apply to pets do not apply to service animals. It is reasonable to inform visitors so that they do not mistakenly believe that regulations which apply to pets are intended to limit their use of these essential assistants.
- Special Event- It is necessary to clarify the definition of special event so that the public can better understand when a permit is required and to address a change in scope that now includes state parks.

6100.0525, Penalty: This is existing language formerly numbered 6100.0400. No

substantive change in penalties is intended.

6100.0550, Special Events: Subparts 1 and 2. Existing special events language is moved here from 6100.1930 Subp. 3 for more logical placement. Provisions for fees and security bonds are also existing language. It is reasonable to add state parks to the special events provisions because state parks now issue special events permits. The inclusion of state parks is new language. Formerly, state parks made little use of the special use permit, which is used frequently for forest lands. The provision for insurance is new language that is included for completeness. It would mislead prospective permittees if statutory insurance requirements were not mentioned along with the other provisions for special use permits.

Commercial use is added to emphasize the existing statutory authority of the commissioner to permit commercial use of state lands. To include commercial use in this part serves to inform the public and to provide an enforcement mechanism, short of lengthy civil actions that are often used in cases of trespass and unauthorized commercial use of state lands

**Subpart 3.** A Protection from peddling provision is existing language that is moved from 6100.2300 for more logical placement. No change in meaning is intended.

6100.0600, Hours and Days of Operation: Subpart 1 is unchanged. **Subpart 2** is broadened to include all forest lands. It states that forest lands are open at all times unless posted closed. In the present rule only campgrounds and day use areas have restricted hours. It is necessary to occasionally restrict hours on other forest lands, such as parking areas or trail heads so that illegal activities such as parties and vandalism can be controlled. It is reasonable to inform the public by posting whenever this is done.

Language relating to fee collection is deleted because it is more appropriate to address this in 6100.1300, "Camping".

6100.0650, Restricted Areas: This part currently applies only in parks and in forest campgrounds and day use areas. It is necessary to extend its provisions to forest lands because restricted areas and fee areas can exist on forest lands outside of campgrounds and day use areas. For example, a forest area would be restricted when a special use permit is issued for a road rally on forest roads. It is necessary in that case, to insure safe conduct of the rally, to be able to post and enforce the restriction.

6100.0700, Personal Conduct and Prohibitions: Changes here are editorial and have no material effect on the rule. They are made for purposes of clarity.

6100.0800, Public Safety; Hunting; Firearms; Weapons: Subpart 1 (Restrictions), is

expanded to include forest recreation areas. This is necessary to provide for public safety in the vicinity of areas such as parking lots and trail heads that are used by hunters and recreational shooters. It is reasonable to apply the same standard of safety in these areas as in campgrounds and day use areas. There are also some editorial changes made for purposes of clarity. Subpart 1, B is existing rule language that is moved here for better placement.

**Subpart 2** (Exceptions) Language relating to elevated scaffolds is moved to 6100.0900 for more appropriate placement.

**Subparts 3 and 4** are repealed. The provisions are moved for more appropriate placement and renumbered as 6100.0800 subparts 2B and 1B respectively.

**Subpart 5** (Hunting and Shooting; Forest Lands) A new subpart is added to inform the public of an existing practice that forest lands are open to hunting and shooting except where posted or designated closed, or prohibited by law. This will help to distinguish forest lands from other DNR managed lands, such as parks, scientific and natural areas and wildlife management areas, which may be closed or more restrictively managed. It is necessary to distinguish open forest lands from recreation areas and shooting ranges, where special regulations apply. It is reasonable to apply regulatory authority under this rule in order to permit the enforcement of postings that restrict these activities and protect the public safety. For example, forest contractors such as tree planters or loggers may be operating in a forest that is popular for target shooting or hunting. Or, a special event may be scheduled in an area that is used for shooting. In such cases, the area would be posted to insure the safety of visitors.

**Subpart 6** (Shooting Ranges; Forest Lands) A new subpart is added to address shooting ranges. The recent construction of a shooting range in the Sand Dunes State Forest makes it necessary to include shooting range activities in the rule. Steps taken to develop the provisions in this subpart include:

- A public meeting was conducted in Orrock, near the shooting range in October 1996. Local residents and forest users commented on plans to construct and operate a shooting range.
  - The "Shooting Range Manual" published by the National Rifle Association, was consulted for guidance about commonly accepted provisions which govern the safe operation of shooting ranges throughout the country.
  - The behavior of shooters on the newly opened range was observed by DNR field staff knowledgeable in firearms safety and shooting range operation.
- Recommendations were made to address certain critical items by rule.

These rules are reasonable as they will allow for safe and orderly operation of the range and provide the ability to enforce range rules.

6100.0900, Environmental Protection: Subpart 1 The changes in subpart 1 are editorial changes only for purposes of clarity.

**Subpart 2 (State Parks) A.** The limitation on taking any tangible object for personal use is necessary so that the park resources are protected against possible extirpation or depletion. Exploitation of plants, such as those used for herbal medicine (e.g. ginseng), or archeological resources, which are irreplaceable, make this provision both reasonable and necessary. There has been an increase in incidents of such exploitation for economic gain in recent years as the popularity of commercial herbal products has increased.

E. Parks are established in statute to preserve and protect the natural resources of the state. There have been problems where a person in possession of plants claims that the plants were collected outside the park. The harvesting of plants removes the plant from the park. The harvest of edible fruits and berries, on the other hand, leaves the plant intact. This type of harvesting for personal use is, and will continue to be allowed. This change prohibits the possession of fresh plants, thus allowing park officers to protect park resources without having to actually witness the illegal taking of plants.

F. Editorial changes only to more clearly define archeology requirements.

G. Elevated scaffold language is existing language that is moved from 6100.0800, subpart 2 for more appropriate placement.

H. The parks need protection from the introduction of non- native and domesticated strains of plant and animal life so that efforts to preserve and restore ecosystems are not threatened. This is reasonable because part of the state mission of parks is "to protect and perpetuate ...Minnesota's natural phenomena" [Minn Stat Sec. 86A.05, subd. 2]. Contractors and permittees are excepted because this allows the commissioner to undertake vegetative management such as prairie restoration, and therefore is reasonable.

**Subpart 3 (Forest Lands) A.** This change expands the scope of lands on which fuelwood gathering is permitted. This activity was formerly permitted only in campgrounds and day use areas. However, campers in dispersed areas will likely gather fuelwood for campfires too and it is reasonable to allow it. For clarity, language is added to remind campers that fuelwood that is removed from forest lands must be purchased under a timber sale permit.

**B. (Elevated Scaffolds)** It is necessary to include language that addresses the construction of elevated scaffolds in order to limit forest damage that occurs. It is reasonable, given present levels of use, to permit the construction of scaffolds for activities such as deer hunting. However, it is necessary to prevent forest damage that

occurs when hunters cut down trees to build a scaffold. The rule clarifies that removing the lateral branches of trees and cutting shrubs is permitted. This is a reasonable accommodation.

C. (Introduction of Plants and Animals) This provision is added to affirm the commissioner's statutory charge under Minn Stat 89.002 to manage forest lands in a way that protects native ecosystems and sustains productivity. It is reasonable to require that persons wishing to release animals or plant vegetation on forest lands obtain permission first.

6100.1000. Fires and Refuse: **Subpart 1** has an editorial addition which preserves the scope of this subpart to apply only in parks, campgrounds and day use areas. This is necessary because 6100.0300, "Scope", no longer addresses land types. This is now done in each part and subpart, as explained earlier. **Subpart 2** is clarified by adding a statutory citation for the commissioner's authority to declare a fire ban.

6100.1100. Pets: Language is added to indicate the scope of lands affected and the broader term "service animal" is added so that the rule does not limit people to using dogs only.

6100.1200. Picnicking: Picnicking is, in actuality, not restricted to designated picnic areas. This language is obsolete and is not currently enforced. A large group wishing to use an undeveloped area of a park would be required to obtain a special use permit and the change reflects this fact.

6100.1250 Camping: Although this appears in the revisor's draft as all new language, this part is mostly just reorganized and clarified. New provisions are explained where they appear. **Subpart 1** (Camping in State Parks) *E.* The rental period language is clarified, but not changed. Language relating to removal of abandoned equipment is clarified with regard to Minn Stat Sec. 16B.25, which deals with the handling of abandoned property. *F.* This clarifies that the campsite must be vacated by the expiration time of the camping permit. Campers have argued that they have the right to the campsite until 10pm on the day after their last night of camping. It is reasonable to require a campsite to be vacated after the permit expires. *I.* Many users of horse camp areas prefer to use corrals for their horses and often there is a shortage of hitching posts or picket lines. This change allows users to provide for the containment of their horses while still keeping the area open for others. Portable corrals have been used to claim a large area of a camp and effectively exclude others. It is necessary and reasonable to set limits on the use of portable corrals so that they are not used to unfairly exclude others from a public use area. *J.* Group camps are specific areas designed for multi-family parties or for groups that exceed the limitations of regular campgrounds. This provision limits the use of group camps to registered users. It is necessary to distinguish group

camping areas, for which registration is required, from other public use areas which may be used without a permit.

**Subpart 2** (Camping in Forest Campgrounds and Use of Forest Day Use Areas)

Language is reorganized to be parallel and consistent with 6100.1250, Subpart 1 (Camping in State Parks) to the extent possible. This will be helpful to campers who camp in state parks and in state forest campgrounds, by making the conditions for camping at any DNR campground similar. Thus, there will be less confusion and fewer inadvertent infractions of rules. Most of the changes do not impose new regulations. Those which do are:

*D. Camping fee-* Language relating to the determination of fees is clarified to be consistent with the provisions of Minn Stat Sec. 16A.1285, but this clarification effects no change in the meaning of the provision. A provision is added to permit the assessment of a collection fee in cases where an employee must visit the campsite to collect the fee. State forest campgrounds, unlike state parks, are not staffed by resident managers and depend on self-registration by campers. Although campers are supposed to register immediately, many do not. The only existing consequence for not immediately registering is to cite the camper for non-payment, which imposes a significant fine. To assess a collection fee provides a mechanism which may discourage late payment and helps the department to partially offset the costs of operating the facility.

*I. Waste disposal.* Existing rule refers to "chapter 4630". Chapter 4630 of Minnesota Rules addresses a multitude of campground operating provisions. It is necessary to clarify that the reference to 4630 applies to sewage waste. It is also necessary to provide additional language to address the disposal of non-sewage waste (often known as 'grey water'). The provisions for disposal of non-sewage waste approximate the language found in 4630.3600. This is a reasonable clarification of existing rules in that it provides clearer and more complete information to visitors.

*J. Horse camps.* This provision is added for similar reasons stated in the parks portion. In addition, forest horse camps are experiencing increasing use and more conflict when horse campers have arrived early and set up a large corral to effectively "claim" the camp for their friends. It is reasonable to require that portable corrals not be used to unfairly exclude others from a public use area.

**Subpart 3.** Language changes here are editorial and do not change the effect of the subpart.

**Subpart 4.** A minor clarification is added to "watercraft camping" language to indicate that "tied on" also means beached or docked.

6100.1350 Dispersed Camping: There is a demand for primitive camping opportunities on forest lands, apart from the designated camping areas. However, there is also a segment of the population who have taken advantage of a lack of regulations in this area. They have set up seasonal residence on forest lands, built cabins, deposited trash and generally excluded others from use of the land.

It is necessary to enact regulations that prevent unfair use of state lands, while providing a reasonable accommodation for dispersed camping. The reasonableness of these provisions is described as follows:

**Subpart 1.** (Dispersed Camping) The items listed here identify activities that are prohibited because they are:

- A,F) destructive - digging, trenching, placing nails in trees.
- B) incompatible use- camping in closed areas
- C) consumptive - excessive firewood use
- D) disruptive - camping too near a designated campground.
- E) exclude others - permanent structures

In general, dispersed camping is a low impact activity. It is reasonable to regulate activities which are most likely to degrade the resource, while being as permissive as possible.

**Subpart 2.** (Waste Disposal) Provisions here are similar to the provisions listed for waste disposal in camping areas (6100.1250, subpart 2 I) and are similar to provisions in Minn. Rules Chap. 4630. Since these rules apply to other public campgrounds, and are presently referred to in 6100.1300 of the existing rule, it is reasonable to use them here.

**Subpart 3.** (Occupancy Limited) Time limits are established for camping in designated camping areas. It is reasonable to apply the same limits to dispersed camping. It is necessary to add a provision that addresses camp location so that is clear that dispersed camping is permitted for recreational purposes and not to establish a seasonal residence on state land.

**Subpart 4.** (Occupation and Abandonment) It is necessary to prescribe an occupancy requirement in order to prohibit the leaving of equipment on forest lands in a way that discourages or pre-empts others from using the land, and to provide for a means by which state employees can remove unattended equipment. It is reasonable to use consistent time limits throughout the rule for similar activities.

6100.1355 Non-motorized Use. This part formerly applied to state parks and the Richard J. Dorer Memorial Hardwood State Forest. It now applies to parks and all forest lands. Existing regulations which applied in the Richard J Dorer are specifically mentioned because they are somewhat more restrictive than elsewhere. The expansion of scope in this existing provision will not affect most forest lands because the provision is permissive, except where restrictions are posted. However, with increasing use and the

proposed regulation of motorized uses on state forest lands, it is necessary and reasonable to provide a means for enforceable postings to protect and manage non - motorized trails on forest lands

6100.1400 Boating: Items A and C have editorial changes for clarity. In item D, It is necessary to regulate the use of state owned docks and piers so that free and fair access is provided to users. Thirty minutes is a reasonable time to allow for launching and loading and unloading at a dock or pier. Visitors staying longer are expected to beach the watercraft and free up dock space for other users.

6100.1500 Fishing: **Subpart 1.** This is a clarification of the rule for park users. Currently the taking of turtles, frogs, clams or other aquatic life is implicitly prohibited in this part which allows fishing for fish only. Aquatic life, other than fish are now specifically mentioned for clarity. This is necessary to protect the environmental integrity of the park.

**Subpart 2.** ( Fish Cleaning) This provision formerly applied only in state parks. It is reasonable to apply fish cleaning rules to similar facilities in state forests in order to minimize the nuisance odors and sanitation problems attendant to this activity.

6100.1600. **Swimming:** The scope if this existing part is expanded to apply equally to park and forest swimming areas. The corresponding part 6100.1600, which applied similar provisions to forest campground and day use area beaches is repealed, thus simplifying the rule. The safety concerns which are addressed for park beaches apply to forest beaches too. Clothes changing language is clarified. Current wording appears to allow changing of clothes anywhere in a beach area if changing facilities are not permitted. Additional editorial changes are made for purposes of clarity.

6100.1650. **Storage and Abandonment of Personal Property:** Existing Subparts 1,2 and 3 in this part that were formerly numbered 6100.1800 are moved to 6100.1900 for more logical placement. The remaining language is renumbered as new **subparts 1,2 and 3.** There are editorial changes for clarity and an expansion of scope to include forest lands. It is necessary to include forest lands so that the rule can be used to protect forest lands from improper use and occupancy.

**Subpart 3.** (Disposal) Existing language requires land managers to wait for 30 days before removing personal property from state lands. It is often obvious after only a few days whether or not property has been abandoned. It is reasonable to shorten the waiting time to 14 days so that abandoned property can be removed sooner and the land can once again be made available for public use and enjoyment.

6100.1700. **State Park Motor Vehicle Permits:** Changes in this part are editorial and

eliminate language that is duplicated in statute for clarity and brevity.

6100.1710 Group Daily Vehicle Permits: The permit fee amount is deleted because the price of a group daily permit is set in statute.

6100.1900. Motor Vehicles and Snowmobiles in State Parks, Forest Campgrounds and Day Use Areas: All provisions here presently exist in the rule. **Subparts 1,2 and 3** have been moved from 6100.1800 for clearer placement. Changes reflect clarifications of meaning and scope, but do not change the effect of the rule.

6100.1950 Motor Vehicles and Snowmobiles: Forest Lands: This part addresses the management of motor vehicles on forest lands. Because this part proposes substantial changes in the management of motor vehicles, a comprehensive treatment of the issue is presented.

### **Dimensions - Background and Current Conditions**

The DNR's strategy for off - highway vehicle (OHV) management has evolved over many years. Off - highway vehicles include: all-terrain vehicles (ATV), off-highway motorcycles (OHM), off-road vehicles (ORV), and licensed motor vehicles used for off road travel. Until recently, the numbers and impacts of OHV's were relatively low in most parts of the state. Policies and regulations were developed to generally prohibit OHV use in State Parks, Wildlife Management Areas, and Scientific and Natural Areas. The DNR has allowed use of OHV's in most state forests, due in part to the lack of an enforceable rule governing motorized use in state forests. Exceptions to this general policy have been established by rule (e.g. R. J. Dorer Memorial Forest) or management plans for specific forest areas.

As the number of OHV's increased, the DNR began developing trails and other facilities for OHV use in selected state forests. Other roads and trails have been posted to limit or prohibit OHV use. These actions to develop OHV facilities and to regulate OHV use have often been taken with little planning for the overall pattern of motorized and non-motorized recreation opportunities in an area.

The Minnesota legislature passed laws giving the DNR certain management responsibilities for all- terrain vehicles (ATV's) in 1984 and off -highway motorcycles (OHM's) and off-road vehicles (ORV's) in 1993. In addition to parts 6100.0100 to 6100.2400, two other rules address OHV use. Parts 6102.0001 to 6102.0080 provides for the regulation of registration and use of all-terrain vehicles, off-highway motorcycles and off-road vehicles. It is a new rule promulgated in 1998 which:

- Requires registration of OHV's
- Allows commissioner to grant operating permits for vehicles used in

- special events
- Specifies required equipment (lights, mufflers, brakes, etc.) for OHV's operated on public lands, waters, roads, and trails.
- Controls OHV operation on public lands, waters, and trails by providing that: the DNR shall post signs as necessary and desirable to regulate OHV use or to protect natural resources or public safety. It is a violation to disobey a sign posted by the DNR and establishes rules of the road' for OHVs
- Specifies content of ATV and OHM training programs.

Part 6234.0100 regulates the use of motor vehicles for small game hunting ( completed in 1998). It requires hunters to shut off the engine and move 20 yards away from a motor vehicle before discharging a weapon at a grouse.

### **Trends**

OHV numbers and use are significant and growing in Minnesota. In 1997 there were an estimated 172,000 ATV's , 88,000 OHM's and 122,000 ORV's used for off road recreation in Minnesota. Actual numbers of ORV's and OHM's registered for off road use are less than these figures, because rules governing registration were only recently finalized. ATV registration requirements have been in place for several years. There were more than 15,000 new, first time ATV registrations each year in 1995 and 1996. There are over 79,000 ATVs currently registered for use on public lands and waters in Minnesota. [Duluth News Tribune news article - Appendix E]

The increasing numbers and uses of OHV's have resulted in more impacts on natural resources and other users of DNR administered lands. In some areas there has been significant damage to vegetation, increased erosion and sedimentation, and proliferation of unauthorized trails. The DNR has also noticed increasing numbers of complaints involving conflict between people using public lands (e.g. between walking grouse hunters and those using OHV's, between motorized and non-motorized users of trails).

Recreational use of OHV's provides social and economic benefits. The social and economic benefits must be balanced against the environmental, social, and economic costs of recreational OHV use. The management of OHV's must consider the health and productivity of ecosystems, provide a quality trail system for various OHV users and non-users and provide equal opportunity and quality for non-motorized forest visitors.

### **Desired Outcomes**

In carrying out its OHV management responsibilities, the DNR seeks to:

1. Provide opportunities for a both motorized and non-motorized recreation on DNR administered lands.

2. Develop additional OHV facilities (trails, motor sports recreation areas) to provide managed, well maintained OHV recreation opportunities on a limited land base. OHV use will be intensified on some lands and reduced or eliminated on other lands.
3. Allow responsible, limited impact use of OHV's on roads and trails in areas of DNR administered lands classified as open to motorized use.
4. Systematically eliminate off - trail use by OHV's on all DNR administered lands, except for specific activities (e.g. retrieving big game animals in areas open to motorized use or by permit).
5. Prohibit the creation of unauthorized trails on DNR administered lands.
6. Use education and enforcement to promote safe and responsible use of OHV's.
7. Engage interested individuals, agencies, and organizations to participate in DNR decisions affecting OHV use on DNR administered lands, roads, and trails.
8. Develop a planning and regulatory framework within which OHV facilities can be constructed and maintained with dedicated funds appropriated by the legislature.

### **The Search For Solutions - What is Necessary and Reasonable?**

Beginning in February 1997 with the announcement of intent to amend these rules, the Department has undertaken to find the most reasonable way to manage OHV's on state forest lands, within the context of a multitude of recreational and commercial uses that occur on these lands.

Initial direction was received from the legislature and is referred to in the "Need for Amendments" section near the beginning of this document.

The DNR embarked on an ambitious effort to develop a comprehensive framework for managing OHV use on all DNR lands. The rule process was delayed as it became apparent that much work was needed before internal agreement would be reached. Furthermore, internal policy formation needed to be informed by public participation from interested citizens and interest groups. Overall, the rule language that evolved serves to support resource management decisions that have been made, by prescribing what constitutes acceptable use of the forest by motorized visitors. Acceptable use is that which "accommodates off- highway vehicles without sacrificing the integrity of the natural environment or the rights of those who choose non-motorized forms of recreation" (Commissioner Rod Sando, memo dated Sept. 1, 1994)

Rule development related to OHV's has been guided by the results of numerous discussions among resource managers and extensive public input. These are summarized below:

- 1 The DNR - OHV Coordinating Committee - Since December 1996, regional and

St. Paul staff from Forestry, Trails and Waterways, Enforcement and Administration (planning) have met quarterly. They have discussed and decided key issues and coordinated the development of regional and statewide guidelines for OHV use. This group also contributed to the development of rule provisions by providing input from the group members' internal (DNR) and external (U. S. Forest Service, counties, motorized user groups, and public meeting) contacts.

- 2 Regional OHV Guidelines - Beginning in the Northeast region in 1995, DNR regional resource managers worked to develop guidelines for OHV management. The process included interdisciplinary discussion, interagency participation and public meetings. [Summaries of regional efforts - Appendix C]
- 3 Rule making Internal Advisory Group - An interdisciplinary group of field staff gave initial direction on what issues needed to be addressed. This group was selected because of each member's familiarity with the resource and the problems emerging due to OHV use.
- 4 Rule making External Advisory Group - The official "Request for Comments" generated a list of about 200 interested citizens and groups. Twenty eight said they would like to participate on an Advisory Committee, and all were invited. The group met six times from January to March 1998. They reviewed proposed rule language line by line. [Membership list - Appendix B]
- 5 Regional Public Meetings - Regional staff conducted numerous "public input meetings" in 1997 for the purpose of soliciting input on regional OHV guidelines. The input received was carried by staff into the rule discussions.
- 6 Metro Region Public Input Meeting - In October 1997, a public input meeting was conducted at the Earle Brown Center and the University of Minnesota. Its purpose was to solicit input on the OHV issue, identify concerns and explore solutions to OHV management ideas. [Questionnaire and discussion results- Appendix F]
- 7 OHV Land Classification Open Houses -Open houses were held throughout the state in May 1998. Citizens had the opportunity to review and comment upon the commissioner's plan for classifying all forest lands into one of three categories for OHV use. [Forest classification process documents, open house schedule, summaries of comments, classification map and memo - Appendix D]
- 8 System Planning Workgroups - Presently underway, but not yet completed, is a coordinated effort to assess existing forest trails and decide where OHV and other types of trails should be designated and maintained. Local workgroups consist of

DNR staff, interested citizens and other resource management agency personnel.

In summary, DNR staff from the field and central office have worked with and listened to citizens. Proposed rule language and DNR management plans have changed significantly as a result of these activities. What follows is a discussion of specific rule language which has emerged as the DNR's preferred alternative.

The commissioner has authority under Minn Stat Sec. 89.002 to prescribe forest management policy for multiple uses and make decisions about land management in order to meet the statutory objectives. Classification of forest lands for OHV use is done under this authority and is not the subject of this rule. The purpose of Part 6100.1950 is to regulate the activities of OHV users on lands managed by the commissioner.

**Subpart 1. Classified Lands-** Conditions vary widely around the state with regard to OHV use, competing uses, distribution of public lands and the ability of forests to sustain recreational uses. In order to address these varied conditions, the Department has classified forest lands into three OHV use categories. These are: Managed, Limited and Closed. [Appendix D]

On forest lands classified as Managed, all forest roads and trails are open to motorized use unless posted and designated closed. On forest lands classified as Limited, forest roads are open to motorized use unless posted and designated closed, and forest trails are closed to motorized use unless posted and designated open. On forest lands classified as Closed, forest roads are open to licensed motor vehicles, and all forest lands are closed to motor vehicles, with the exception of designated snowmobile trails and frozen public waters.

It is necessary to prescribe some operating restrictions that are specific to each classification category in order to establish a general framework for OHV management. It is also reasonable to broadly describe restrictions so that visitors can follow easily understandable rules designed to achieve management goals in the area, and so that visitors coming to a particular forest area are alerted as to the general operating conditions allowed for motor vehicle use.

**Subparts 2, 3, 4. Criteria for classification, Notice and public meeting, Commissioner's decision.** - Although the classification of forest lands under Minn Stat 89.002 is not the subject of this rule, the commissioner agrees to outline in this rule the general criteria that are considered in the classification decision. Furthermore, the commissioner agrees to provide for public input and notice prior to changing the classification of an area. This

is a reasonable accommodation to the concerns of citizens who desire to participate in the classification process. It establishes a framework for discussion and decision making which the department believes is in the best interest of the natural resources of the state.

It is relevant to point out that Minn Stat Sec.14.69 requires that decisions made by the commissioner are based on substantial evidence and are neither arbitrary nor capricious.

**Subpart 5.** Non - motorized trails. - This subpart addresses the situation of dual use trails. For example, a horse trail may be posted to permit ATV's, or a hiking trail may permit snowmobiles in the winter. As a rule, non-motorized trails are just that. It is necessary to state that exceptions may occur and that they will be designated by postings.

**Subpart 6.** Lakes, Rivers, Streams. - The beds of lakes, rivers, and streams are most sensitive to the impact of motorized vehicles. Aquatic habitats can be easily disrupted and even destroyed. Motor vehicles contain petroleum products that can be washed off or leaked into water bodies, causing pollution. Therefore, it is necessary to prohibit OHV's from traveling on or in unfrozen public waters. It is reasonable because these vehicles are designed to operate on lands and the state provides land based trails.

**Subpart 7.** Other Prohibitions and Exceptions. -

A. A prohibition on off - trail travel is necessary in order to control the proliferation of unauthorized trails and control resource impacts. Off - trail travel tends to create new corridors which subsequent visitors will follow. With no requirement to stay on existing trails, any management of OHV use would be impossible.

One exception to this restriction is allowed for the long established practice of retrieving big game animals with ATV's. To permit a single, low impact pass across the land for one purpose is a reasonable accommodation for this traditional use. A second exception permits off - trail use in designated areas where no trail exists. These "Scramble Areas" are designated areas such as abandoned gravel pits where OHV's can be permitted to operate freely.

B. A general prohibition against causing environmental damage such as erosion, rutting and the destruction of vegetation is necessary because most state lands are generally open to OHV's. Riding on trails is permitted in managed forests. It is necessary to require that the operation of OHV's on trails occurs without damaging the resource. This is reasonable because such low impact riding practices are promoted as ethical by the national OHV cooperative "tread lightly" program. [ Appendix G]

An exception is noted for designated motorized trails because it is expected that damage will be repaired through regular maintenance operations. These are trails that are posted, maintained and repaired for OHV use. It is anticipated that damage due to use will be

properly repaired.

C. Unauthorized trail creation negates the ability of the commissioner to manage lands per statutory directives.

D. It is necessary to have the ability to enforce postings and designations. It is reasonable to inform visitors that such postings and designations will be enforced.

E. OHV management in the Richard J. Dorer Memorial Hardwood Forest is presently established in rule 6100.1920. This language will preserve the present restrictions after 6100.1920 is repealed. This is part of the restructuring and change of scope which brings all state forest lands into the body of the rule.

**Subpart 8. Forest Roads.** - The use of forest roads is generally addressed in rule 6100.1930. The new ATV rule, 6102.0001 to 6102.0080, contains the provisions of 6100.1930 and makes them applicable to all public lands. It is proposed to repeal 6100.1930 to avoid redundancy. Therefore, this subpart is included to cover the use of forest roads specifically. Minn Stat Sec. 89.71 established state forest roads as separate and distinct from public highways. Therefore, it is necessary to prescribe operating rules for forest roads.

The provisions of this subpart are reasonable to the extent that they are similar to the provisions of 6100.1930. Item C is added to highlight the importance of road closure postings and gates. Item D is added to assert the state's right to manage and protect state forest roads by prohibiting unauthorized snow removal. This is necessary because some forest roads are managed for snowmobile use in the winter. And also because improper snowplow operation on an unfrozen gravel road may remove the gravel, cause ruts and damage the road.

**Subpart 9. Operating under the influence.** - This reiterates 6100.1930 subpart 4, which is proposed to be repealed. Existing language is moved here for more logical placement.

6100.2350. Official Use and Variance: This is an existing provision that is moved from 6100.0300 "Scope" for better placement. It is rewritten for clarity and to insure that public safety activities are included. This is because public safety personnel, such as paramedics and firefighters should not be inadvertently prohibited by rule from performing their duties. The existing exclusion mentions only law enforcement officers.

6100.2400 Suspension of Rules. These changes are to clean up and simplify the part. No new provision is sought.

#### **D. Repealer**

6100.0400. Penalty: is repealed because the language is moved to 6100.0525.

6100.0500. Definitions: Subpart 3a, disabled person, is a term no longer used in the rule. Subpart 5c, Richard J Dorer Memorial Hardwood State Forest, is no longer referred to in Scope, and it has a statutory definition, as do all other state forests. Subpart 5d, Highway, is redefined as "Road and Highway" and renumbered as 8b. Subpart 7c, Recreational Motor Vehicle, is a term no longer used in the rule.

6100.0800. Subparts 3 and 4 are repealed because they are renumbered as 6100.0800 subparts 2B and 1B respectively.

6100.1300. Camping Areas: This part is repealed because it is renumbered as 6100.1250.

6100.1610. Swimming: This part is repealed because its provisions are consolidated into 6100.1600.

6100.1800. Motor Vehicle Use, Storage and Abandonment: This part is repealed because subparts 1,2 and 3 are moved to 6100.1900 and consolidated with "parks"; and subpart 4 is renumbered as 6100.1650.

6100.1905. Recreational Motor Vehicles: This part is repealed because the language has been moved to Chapter 6102, where it now applies to all public lands.

6100.1910. Recreational Motor Vehicles: This part is repealed because the language is consolidated into 6100.1900.

6100.1920. Richard J Dorer: This part is repealed because its provision is included in 6100.1950.

6100.1930. Use of Forest Lands: This part is repealed because subpart 1 and 2 are moved to Chapter 6102; subpart 3 "special events" is moved and renumbered as 6100.0550, with changes; subpart 4 is moved to 6100.1950, subpart 9.

6100.2000. Non motorized Use: This part is repealed because the language is moved and renumbered as 6100.0650, with changes.

6100.2100. Restricted Areas: This part is repealed because its provision is moved and renumbered as 6111.0650, with changes.

6100.2300. Peddling: This part is repealed because its provision is moved and renumbered as 6100.0550, subpart 3.

## V OTHER CONSIDERATIONS

### A. Review of Documents

Documents and reports cited in this SONAR may be reviewed on work days, between 8:00am and 4:30pm in the Division of Forestry office in the DNR headquarters, 500 Lafayette Road, Box 44, St. Paul Minnesota 55155.

Appendices are part of the official copies of this SONAR, but are not included with copies mailed. These may be viewed at the location noted above. Copies of appendices can be obtained for a nominal copying fee from the Division of Forestry.

### B. Witnesses

If these rules go to public hearing, the witnesses below may testify on behalf of the department in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules.

Witnesses:

Bruce ZumBahlen, Forest Management Section Manager  
Division of Forestry

C. Barry Morse, State Lands Unit Supervisor  
Division of Forestry

Steve Simmer, Forest Recreation Program Coordinator  
Division of Forestry

Ron Hains, Operations Manager  
Division of Parks and Recreation

Dan Breva, Park Operations Coordinator  
Division of Parks and Recreation

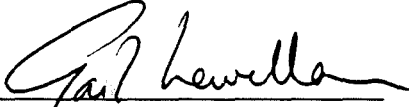
Ron Potter, Off Highway Vehicle Coordinator  
Trails and Waterways Unit

Emmett Mullin, Planner  
DNR Office of Management and Budget

Brad Moore, Field Operations Manager  
Commissioner's Office

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

Rodney W. Sando, Commissioner  
Department of Natural Resources

by:   
Gail Lewellan, Assistant Commissioner for  
Human Resources and Legal Affairs

dated: September 1, 1998

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Steve Simmer at the Department of Natural Resources, Box 44, 500 Lafayette Road, St Paul MN 55155. Phone 651-297-3508, Fax 651-296-5954. TDD users may call the Department of Natural Resources at 1-800-657-3929.

